



EPA Office of Prevention, Pesticides, and Toxic Substances

**How To Comply with the Worker Protection Standard
for Agricultural Pesticides: What Employers Need to Know
Unit 2: An Introduction to the Worker Protection Standard**

September 2005

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UNIT 2

AN INTRODUCTION TO THE WORKER PROTECTION STANDARD

What Is the Worker Protection Standard?	7
Does the Worker Protection Standard Apply to You?	9
Who Does the WPS Protect?	10
Which Pesticide Uses Are Covered?	12
Which Pesticide Uses Are Not Covered?	13
Who Must Protect Workers and Handlers?	14



WHAT IS THE WORKER PROTECTION STANDARD?

The Worker Protection Standard (WPS) is a regulation issued by the U.S. Environmental Protection Agency. It covers pesticides that are used in the production of agricultural plants on farms, forests, nurseries, and greenhouses. The WPS requires you to take steps to reduce the risk of pesticide-related illness and injury if you (1) use such pesticides, or (2) employ workers or pesticide handlers who are exposed to such pesticides.

If you are an agricultural pesticide user and/or an employer of agricultural workers or pesticide handlers, the WPS requires you to provide to your employees and, in some cases, to yourself and to others:

- information about exposure to pesticides,
- protections against exposures to pesticides, and
- ways to mitigate exposures to pesticides.

INFORMATION

To ensure that employees will be informed about exposure to pesticides, the WPS requires:

- **Pesticide safety training** — for workers and handlers,
- **Pesticide safety poster** — to be displayed for workers and handlers,
- **Access to labeling information** — for pesticide handlers and early-entry workers, and
- **Access to specific information** — centrally located application information of pesticide treatments on the establishment.

PROTECTION

To ensure that employees will be protected from exposures to pesticides, the WPS requires employers to:

- **prohibit handlers from applying a pesticide in a way that will expose workers or other persons,**
- **exclude workers from areas being treated** with pesticides,
- **exclude workers from areas that remain under a restricted-entry interval (REI),** with narrow exceptions.
- **protect early-entry workers** who are doing permitted tasks in treated areas during an REI, including special instructions and duties related to correct use of PPE,
- **notify workers** about treated areas so they can avoid inadvertent exposures, and
- **protect handlers during handling tasks,** including monitoring while handling highly toxic pesticides, and duties related to correct use of PPE.

MITIGATION

To mitigate pesticide exposures that employees receive, the WPS requires:

- **Decontamination supplies** — providing handlers and workers an ample supply of water, soap, and towels for routine washing and emergency decontamination,
- **Emergency assistance** — making transportation available to a medical care facility if an agricultural worker or handler may have been poisoned or injured by a pesticide, and providing information about the pesticide(s) to which the person may have been exposed.

These key terms have very specific meanings in the WPS. Note that these definitions may be different from definitions found in other state and federal laws and regulations.

Terms You Need to Know

These definitions will help you determine whether you are affected by the Worker Protection Standard.

Agricultural plants: Plants grown or maintained for commercial or research purposes. Examples: food, feed, and fiber plants, trees, turfgrass, flowers, shrubs, ornamentals, and seedlings.

Farms: Operations, other than nurseries or forests, that produce agricultural plants outdoors.

Forests: Operations that produce agricultural plants outdoors for wood fiber or timber products.

Greenhouses: Operations that produce agricultural plants indoors in an area that is enclosed with nonporous covering and that is large enough to allow a person to enter. Examples: polyhouses, mushroom houses and caves, and rhubarb houses, as well as traditional greenhouses. Malls, atriums, conservatories, arboretums, and office buildings that grow or maintain plants primarily for decorative or environmental benefits are **not** included.

Nurseries: Operations that produce agricultural plants outdoors for:

- transplants to another location, or
- flower or fern cuttings.

Examples: flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turfgrass produced for sod.

DOES THE WORKER PROTECTION STANDARD APPLY TO YOU?

You need the information in this manual if:

- **You own or manage a farm, forest, nursery, or greenhouse where pesticides are used in the production of agricultural plants.**

Even if you are the owner of the farm, forest, nursery, or greenhouse and you or members of your family do all the work there, you are a “WPS employer.” You must comply with *some* of the requirements described in this manual, such as restricted-entry intervals and personal protective equipment, and *all* the specific requirements listed in the pesticide labeling. See Agricultural Owner Exemptions, pp. 71-73.

- **You hire or contract for the services of agricultural workers** to do tasks related to the production of agricultural plants on a farm, forest, nursery, or greenhouse. This includes labor contractors and others who contract with growers to supply agricultural laborers.
- **You operate a business in which you (or people you employ) apply pesticides** that are used for the production of agricultural plants on any farm, forest, nursery, or greenhouse.

Commercial pesticide handlers and their employees are included with respect to such pesticides even if the pesticide handling task (mixing, loading, disposal, etc.) takes place somewhere other than the farm, forest, nursery, or greenhouse — at the commercial handling establishment or an airport hangar, for example.

- **You operate a business in which you (or people you employ) perform tasks as a crop advisor** on any farm, forest, nursery, or greenhouse.

“Crop advisor” means any person who is assessing pest numbers or damage, pesticide distribution, or the status, condition, or requirements of agricultural plants. Examples include crop consultants and scouts. For a description of WPS provisions for crop advisors, see pp. 74-80.

If you are in any of these categories, you must comply with the Environmental Protection Agency’s Worker Protection Standard (40 CFR, part 170) including all revisions through 2004.

WHO DOES THE WPS PROTECT?

The WPS requires employers to take steps to protect two types of agricultural employees: **workers** and **pesticide handlers**. The terms “worker” and “pesticide handler” are defined very specifically in the WPS, and employers of persons who meet these definitions must comply with the WPS. Depending on the tasks being performed, you may need to provide the same employee with worker protections on some occasions and pesticide handler protections on other occasions.

Owners of agricultural establishments and members of their immediate family are exempt from many WPS requirements. See Agricultural Owner Exemptions pp. 71-73.

Under the WPS, you may be both a worker and an employer of workers.

Under the WPS, you may be both a handler and an employer of handlers.

WORKERS

A worker is anyone who: (1) is employed (including self-employed) for any type of compensation and (2) is doing tasks, such as harvesting, weeding, or watering, relating to the production of agricultural plants on a farm, forest, nursery, or greenhouse. This term does **not** include persons who are employed by a commercial establishment to perform tasks as crop advisors (see Protections for Crop Advisors, pp. 74-80).

PESTICIDE HANDLERS

A pesticide handler is anyone who: (1) is employed (including self-employed) for any type of compensation by an agricultural establishment or a commercial pesticide handling establishment that uses pesticides in the production of agricultural plants on a farm, forest, nursery, or greenhouse, and (2) is doing any of the following tasks:

- mixing, loading, transferring, or applying pesticides,
- handling opened containers of pesticides,
- acting as a flagger,
- cleaning, handling, adjusting, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues,
- assisting with the application of pesticides, including incorporating the pesticide into the soil after the application has occurred,
- entering a greenhouse or other enclosed area after application and before the inhalation exposure level listed on the product labeling has been reached or one of the WPS ventilation criteria have been met to:
 - operate ventilation equipment,
 - adjust or remove coverings, such as tarps, used in fumigation, or
 - check air concentration levels,
- entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings, such as tarpaulins,
- performing tasks as a crop advisor:
 - during any pesticide application,
 - before any inhalation exposure level or ventilation criteria listed in the labeling has been reached or one of the WPS ventilation criteria has been met,
 - during any restricted-entry interval,
- disposing of pesticides or pesticide containers.

A person is **not** a handler if he or she only handles pesticide containers that have been emptied or cleaned according to instructions on pesticide product labeling or, if the labeling has no such instructions, have been triple-rinsed or cleaned by an equivalent method, such as pressure rinsing.

A person is **not** a handler if he or she (1) is **only** handling pesticide containers that are unopened **and** (2) is **not**, at the same time, also doing any handling task (such as mixing or loading).

Examples:

- You **are** a handler if you are loading unopened water-soluble packets into a mixing tank (because you are mixing and loading the pesticide).
- You are **not** a handler if you:
 - purchase pesticides and transport them unopened to an establishment.
 - carry unopened containers into a pesticide storage facility.
 - transport unopened containers to the site where they are to be mixed, loaded, or applied.

Handlers who are currently certified as applicators of restricted-use pesticides must be given all of the WPS handler protections, except that they need not receive WPS training.

WHICH PESTICIDE USES ARE COVERED?

Most pesticide uses involved in the production of agricultural plants on a farm, forest, nursery, or greenhouse are covered by the WPS. This includes pesticides used on plants, and pesticides used on the soil or planting medium the plants are (or will be) grown in. Both general-use and restricted-use pesticides are covered by the WPS. You will know that the product is covered by the WPS if you see the following statement in the Directions for Use section of the pesticide labeling:

“AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR 170. This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment, notification of workers, and restricted-entry intervals.”

If you are using a pesticide product with labeling that refers to the Worker Protection Standard, you must comply with the WPS. Otherwise, you will be in violation of federal law, since it is illegal to use a pesticide product in a manner inconsistent with its labeling.

WHICH PESTICIDE USES ARE NOT COVERED?

Some pesticide uses are not covered by the WPS, even when the “Agricultural Use Requirements” section is on the labeling. For example, if the pesticide labeling bears an “Agricultural Use Requirements” section, but the product also can be applied to rights-of-way, the rights-of-way use is not covered by the WPS. The WPS does **not** cover pesticides applied:

- on pastures or rangelands,
- for control of vertebrate pests such as rodents,
- as attractants or repellents in traps,
- on the portions of agricultural plants that have been harvested, such as in packing houses or on cut timber,
- for mosquito abatement, Mediterranean fruit fly eradication, or similar government-sponsored wide-area public pest control programs,
- on livestock or other animals, or in or around animal premises,
- on plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit and vegetable gardens, and home greenhouses,
- on plants that are in ornamental gardens, parks, golf courses, and public or private lawns and grounds and that are intended only for decorative or environmental benefit,
- in a manner not directly related to the production of agricultural plants, including, for example, control of vegetation along rights of way and in other noncrop areas and structural pest control, such as termite control and wood preservation,
- for research uses of unregistered pesticides.

The WPS does not cover **workers** who are working in an area where a pesticide has been injected directly into the plants. However, people who **handle** pesticides that are to be applied by direct injection **are** covered by the WPS and must receive handler protections.

*Pesticides used on sod farms **are** covered by the WPS.*

Direct injection does not include chemigation, soil incorporation, soil injection, hack and squirt, or frill and spray.

WHO MUST PROTECT WORKERS AND HANDLERS?

Employers are responsible for making sure that workers and handlers receive the protections required by the pesticide labeling and the WPS. The term “employer” has a special meaning in the WPS — you are an employer even though you are self-employed or use only members of your own family to do the work on your establishment.

The WPS has very specific definitions for two types of employers. WPS requirements apply only to employers who meet those definitions.

Compensation includes pay or wages, payment through services or goods, or barter of services or goods. If only one person receives payment for the joint work of several people, all are considered to be compensated, and are employees under the WPS. For example, under a piece-rate payment system for harvesting crops, even if payment is issued to the head of the family only, all of the family members who harvest crops are considered employees under the WPS.

WPS EMPLOYER DEFINITIONS

Worker Employers:

Worker employers are people who:

- **employ or contract for the services of workers** (including themselves and members of their family) for any type of compensation to perform tasks related to the production of agricultural plants, or
- **own or operate** an agricultural establishment that uses such workers.

(See definition of “owner,” p. 71.)

(See definition of “worker,” p. 10.)

If you are a worker employer, you are responsible for providing your agricultural worker employees with the protections that the WPS requires for **workers**. (In the WPS itself, “worker employers” are called “agricultural employers.”)

Handler Employers:

Handler employers are people who:

- **employ pesticide handlers** (including members of their family), for any type of compensation, or
- **are self-employed as pesticide handlers.**

(See definition of “pesticide handler,” p. 10.)

If you are a handler employer, you are responsible for providing the pesticide handlers you employ with the protections that the WPS requires for **handlers**.

If You Employ Supervisors

You must:

- require them to make sure the workers and handlers they supervise comply with the WPS and receive its protections,
- give them enough information and directions about the WPS requirements to make sure that the workers and handlers they supervise receive the protections required by the WPS, and
- tell them who is responsible for all actions necessary for compliance with the WPS.

Even if you assign an employee to carry out the duties required by the WPS, **you are responsible** for making sure that all those duties are performed.

Retaliation Prohibited

You and your supervisors must not prevent or discourage any worker or handler from complying or attempting to comply with the WPS, and you must not fire or otherwise retaliate against any worker or handler who attempts to comply.

Penalties for Noncompliance

Agricultural and handler employers can be subject to civil and criminal penalties if found not complying with the federal Worker Protection Standard including all revisions through 2004. Failure to comply is a pesticide misuse violation — also known as use of a pesticide in a manner inconsistent with its labeling. Failure to comply with distinct acts of the WPS may result in independently assessable charges, even if the violative acts occurred during one pesticide application.

Currently, a federal civil penalty of up to \$1,100 per violation may be assessed against private applicators (owners/operators of agricultural establishments) and other persons, and up to \$6,500 per violation against commercial applicators (owners/operators of pesticide handling establishments) and other persons. Since Congress passed the Civil Monetary Penalty Inflation Adjustment Rule under the Debt Collection Improvement Act of 1996, civil penalties have been increased due to inflation and Congress' intent on creating a deterrence to noncompliance. The next civil penalty adjustment is expected to occur in 2009.

Criminal penalties can also be assessed if the WPS is knowingly violated. Federal fines include up to \$1,000 per offense and 30 days in jail for private applicators, and up to \$25,000 and 1 year in jail for commercial applicators.

Most states and tribes enforce under their own laws and regulations and have their own penalties, which may differ from federal penalties. Pesticide-related ordinances and associated penalties may also be imposed by local governments.

Labeling Overrides WPS

If the pesticide product labeling contains specific instructions or requirements that conflict with the requirements of the Worker Protection Standard, **follow the instructions or requirements on the labeling**. For example, some pesticide labeling may:

- prohibit any early-entry activity, including short-term and emergency tasks,
- allow an early-entry activity that the WPS does not allow,
- require the use of personal protective equipment even if closed systems are used for mixing and loading.

Exceptions to Labeling Statements

The WPS allows certain exceptions to three specific pesticide labeling requirements: **personal protective equipment (p. 62)**, **restricted-entry intervals (p. 36)**, and **double notification (p. 33)** (the requirement on some labeling for both oral warnings **and** posting treated areas). The WPS statements in the Agricultural Use Requirements box on the product labeling will tell you that the WPS contains these exceptions.

